Annual Report

2006-2007

LETTER TO THE ATTORNEY GENERAL

BRITISH COLUMBIA

British Columbia Human Rights Tribunal

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August 24, 2007

Honourable Wally Oppal
Attorney General
Province of British Columbia
Room 232
Parliament Buildings
Victoria, BC V8V 1X4

Dear Attorney General:

It is my pleasure to present the fourth Annual Report from the BC Human Rights Tribunal, covering the period April 1, 2006, to March 31, 2007.

This report has been prepared in accordance with section 39.1 of the *Human Rights Code*.

Yours truly,

Heather M. MacNaughton
Chair

HMB

Enclosure

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Message from the Chair

Message from the Chair

The Tribunal has now completed its fourth year of operation, under the direct access model for human rights protection. This year was a year of stability. The Rules of Practice and Procedure have been in operation for more than three years, are understood by our participants, and are working. Our procedures for processing of complaints have matured. Our guides and information sheets are clear, easily accessible, and answer participants' most frequently asked questions. Our case management system is working well and few changes are required. Our staff are well-trained and effective.

The Tribunal's website has become an increasingly important source of information about rights and responsibilities under the *Code*. Information available on the website, and access to it, has resulted in fewer telephone and email inquiries.

We have had very little staff turnover. As a result, the Tribunal was able to reduce its processing time for new complaints and maintained a current workload for most of the year.

Tribunal Mandate and Purposes

The Tribunal is an independent quasi-judicial body created to fulfil the purposes set out in section 3 of the *Code*:

a) to foster a society in British Columbia in which there are no impediments to full and free participation in the economic, social, political and cultural life of British Columbia;

b) to promote a climate of understanding and mutual respect where all are equal in dignity and rights;

c) to prevent discrimination prohibited by this Code;

d) to identify and eliminate persistent patterns of inequality associated with discrimination prohibited by this Code;

e) to provide a means of redress for those persons who are discriminated against contrary to this Code.

Established in 1997, it continued as a standing adjudicative body pursuant to the March 31, 2003 amendments to the *Code* that instituted a direct access model for human rights complaints and eliminated the BC Human Rights Commission. The Tribunal is now responsible for all steps in the human rights process, but does not have the investigatory powers of the former Commission.

The Tribunal's office and hearing rooms are located in Vancouver, although the Tribunal conducts hearings and settlement meetings throughout the Province. The Tribunal manages its staff, budget and physical facilities, and engages its own consultants and specialists. Pursuant to a *Code* power to do so, the Tribunal has developed its own rules to govern practice and procedure. Its registry is managed by a Registrar who is a lawyer.

Tribunal Workload

The Tribunal continued to have a significant workload. Members released 524 interim decisions, 82 final decisions (including 6 costs / reopening file after final), presided over 76 hearings, and conducted 371 settlement meetings (including 180 early settlement meetings) in the year. Registry staff or Members also conducted 712 pre-hearing conferences.

At the start of the year, the Tribunal had 797 active cases in its inventory. By the end of the year, that number had been reduced to 691. Active cases do not include those that are in the midst of settling, final decisions on which applications for judicial review have been filed, or which have been deferred pending the outcome of another proceeding.

Message from the Chair

There were 1,018 new complaints filed, slightly less than the number filed in the previous three years. The number of complaints going to hearing in the year went up reflecting a consistent trend since the start of our operations on March 31, 2003. Despite that, with the cooperation of parties, the Tribunal is still able to process a complaint, notify respondents, provide settlement meeting services, and schedule a hearing within six months of a complaint being filed.

A significant number of complainants and respondents are unrepresented in the Tribunal's process. It appears that when both parties are unrepresented, complaints move more quickly to a hearing. However, more staff and adjudicative resources are required to deal with unrepresented parties and the hearings tend to be longer.

Mediation

The Tribunal's settlement meeting services continue to be heavily used. The Tribunal encourages all parties to participate in settlement meetings and provides the parties the option of attending a tribunal-assisted settlement meeting prior to the respondent filing a response to the complaint, and at any later stage in the process. Each member is currently scheduled to assist parties in settlement meetings an average of six days a month, and the Tribunal continues to use contract mediators on an as needed basis. As will be seen in the detailed report that follows, many complaints settle as a result of these efforts.

Because mediations are commonly a confidential process, the Tribunal does not publish the results achieved at mediation. In many cases, the mediated resolution will result in solutions that could not be ordered at a hearing. Some cases resolve based on an acknowledgement that there has been a breach of the *Code* and an apology. In other cases, the mediated solution may result in systemic change. Some examples of systemic solutions achieved in settlements this year include:

- In a government setting, implementing a process for input into the inclusion of gay, lesbian, bisexual and transgendered issues into school curriculum;
- In a corporate setting, agreement to prepare and post anti-discrimination and anti-harassment policies and to train both management and staff with respect to their rights and obligations under them;
- In a post-secondary institution, providing for a formal process to reintegrate a student who had been absent for a significant period of time due to a mental disability;
- In a corporate setting, mandatory sensitivity training and conflict resolution courses for senior management;
- In a post-secondary institution, accommodating students with learning disabilities so that they can be evaluated, while ensuring that the methods of evaluation meet the standards set by other government regulators;
- In a corporate setting, providing training to management and staff on issues relating to communication with Deaf employees and providing appropriate equipment and interpretive services;
- In a service-provider setting, additional training to enable the service provider to detect the difference between behaviour caused by intoxication or drug use and mental disability;
- In a post-secondary institution, providing for a formal assessment process for students requesting accommodation and a method for tracking and reporting on such requests.

Judicial Reviews

The Tribunal continues to receive a significant number of judicial review applications of interim and

procedural decisions. Despite its clarification of the standard of review in a number of Supreme Court and Court of Appeal decisions, the Tribunal's legal counsel find much of their time is consumed in dealing with such applications. In addition, such judicial reviews tend to delay and fragment the Tribunal's processes.

LITERACY AUDIT

In conjunction with the Canadian Council of Administrative Tribunals, the Tribunal reviewed all of its processes, forms, and website to assess their accessibility to those in our society who are less literate. As a result, all of the Tribunal's standard communications with the parties have been revised to use clear, directive language. Recommendations with respect to the Tribunal's forms and website will form part of the Tribunal's work in the coming year.

THE COMING YEAR - LEGISLATIVE REFORM

In addition to work on the Tribunal's forms and its website, announced amendments to the *Code* were tabled in May 2007. The amendments will come into effect on January 1, 2008. Their primary impact will be to amend the definition of age in the *Code* to include persons who are over the age of 65. The principal purpose of this amendment is to bring mandatory retirement within the scope of prohibited conduct under the *Code* unless a *bona fide* occupational requirement is established. In addition, for the first time, the ground of age will be added as a prohibited ground in the area of services. A further amendment will be made to the area of publication.

As a result of the amendments, the Tribunal will reissue some of its public information to take into them into account.

The Tribunal expects an increase in the number of cases that will be filed on the basis of age and, as employees and employers implement this significant change. I have sought additional resources from the Ministry of the Attorney General to allow us to deal with the increased workload.

RULES AMENDMENTS

In conjunction with the *Code* amendments, the Tribunal will amend some of its rules and processes. The Tribunal will seek input from its user groups as to proposed rule changes.

COMPLAINT FORMS

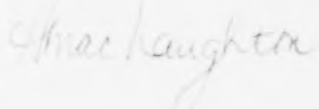
In response to the literacy audit, the Tribunal will redesign its complaint form to make it easier for complainants to complete. As a part of upgrades to the Tribunal's case management system, and its website, the Tribunal is reviewing the possibility of web-based complaint forms which could be filed on-line.

TRIBUNAL CASE MANAGEMENT SYSTEM

As a result of technology enhancements, the Tribunal will upgrade its case management system. The upgrades will allow web-based communication with us.

CONCLUSION

I extend my thanks to the dedicated staff of hard-working professionals with whom I work. Their contribution to the goals in the *Code* is truly remarkable and is in the finest tradition of public service.



Heather M. MacNaughton
Chair

Cost of Operation

BC Human Rights Tribunal Operating Cost
Fiscal Years 2005-06 and 2006-07

Category	2005-2006 Expenditure	2006-2007 Expenditure
Salaries (Chair, Members, Registry and Administration)	$ 1,878,638	$ 1,793,079
Employee Benefits	$ 440,968	$ 443,882
Retired Members – Fees for Completing Outstanding Decisions	$ 4,730	$ 9,600
Travel	$ 63,511	$ 98,845
Centralized Management Support Services	$ 706	$ 1,833
Professional Services	$ 69,867	$ 29,816
Information Services, Data and Communication Services	$ 16,123	$ 20,750
Office and Business Expenses	$ 77,307	$ 82,570
Statutory Advertising and Publications	$ 11,458	$ 6,988
Amortization Expenses	$ 45,520	$ 45,245
Building Occupancy	$ 453,962	$ 485,000
Total Cost	**$ 3,062,790**	**$ 3,017,608**

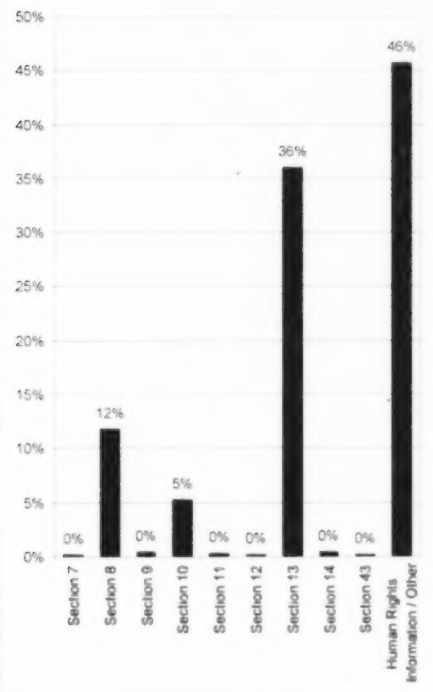
Inquiry Statistics

General inquiries about the Tribunal process are answered by two Inquiry Officers. The Inquiry Officers also provide basic information about the *Code* protections and refer callers to appropriate resources. They answered 13,108 inquiries this year, averaging 53 calls daily.

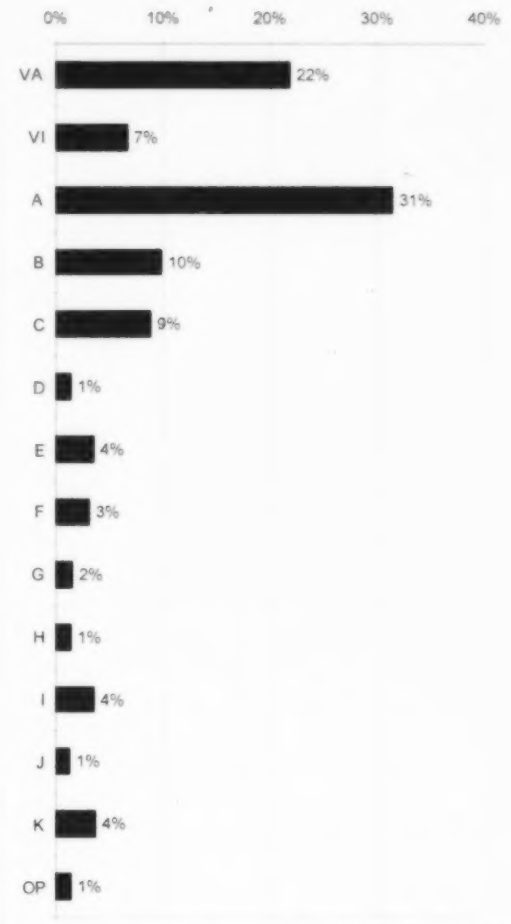
The highest percentage of complaint inquiries, 36%, related to employment (sections 13 and 14 of the *Code*). Inquiries relating to services (section 8), represented 12% of the inquiries, and those relating to tenancy (section 10) represented 5% of the total.

A toll-free number enables callers throughout the province to access the Inquiry Officers. The geographic origin of inquiries indicates that 22% originated from Vancouver, 31% from the Lower Mainland (excluding Vancouver), 7% from Victoria, and 39% from elsewhere in the province.

Summary of Complaint Inquiries



Geographic Origin of Inquiries



LEGEND

VA ..... Vancouver
VI ..... Victoria
A ..... Lower Mainland (Excluding Vancouver)
B ..... Vancouver Island & Gulf Islands (Excluding Victoria)
C ..... Okanagan
D ..... Rocky Mountains
E ..... Squamish / Kamloops
F ..... Kootenays
G ..... Sunshine Coast
H ..... Cariboo
I ..... Prince George Area
J ..... Skeena
K ..... Northern BC
OP ..... Out of Province

Complaint Statistics

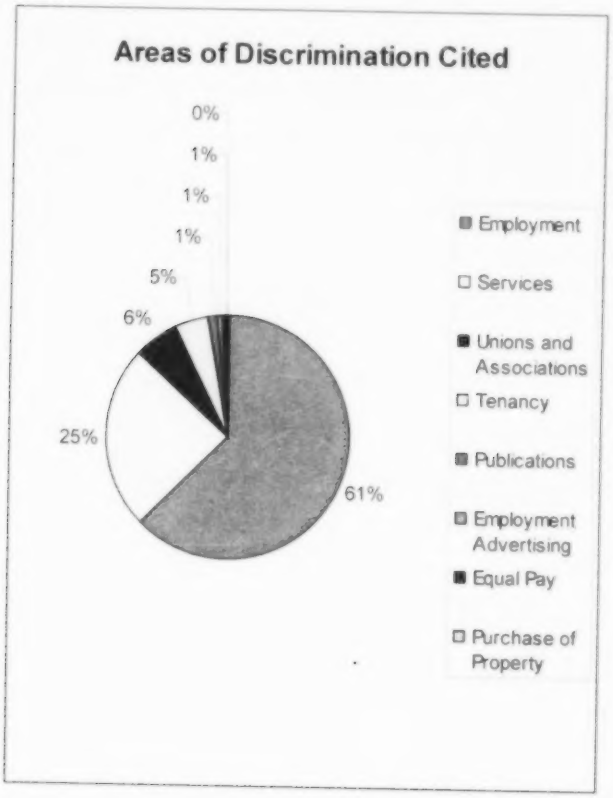
New Complaints

There were 1,018 new complaints filed at the Tribunal, of which 222 were screened out at the initial screening stage.

Areas of Discrimination

The *Code* prohibits discrimination in the areas of employment, employment advertisements, wages, services, tenancy, purchase of property, publication and membership in unions and associations. It also forbids retaliation against a person who makes a complaint.

The area of employment was cited most frequently (61%), followed by services (25%), membership in unions and associations (6%), and tenancy (5%).

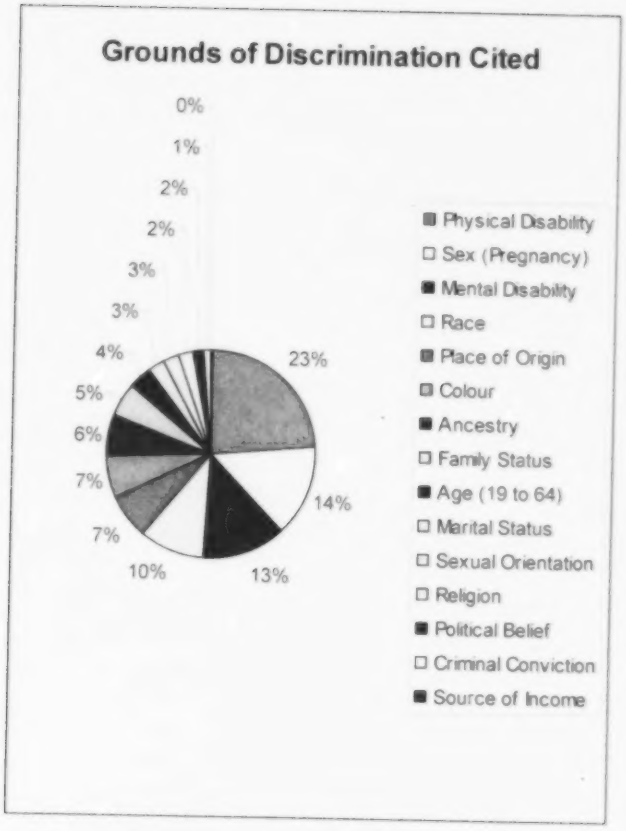


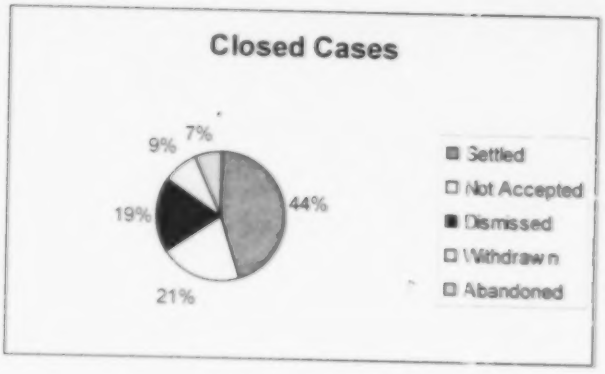
Grounds of Discrimination

There are 15 prohibited grounds of discrimination: age (19 to 64), ancestry, colour, family status, lawful source of income, marital status, place of origin, physical and mental disability, political belief, race, religion, sex (including harassment and pregnancy), sexual orientation and unrelated criminal conviction. Not all grounds apply to all areas.

Some complaints cite more than one area and ground of discrimination. For instance, a complainant with a race-based complaint may also select grounds of ancestry, colour and place of origin.

As can be seen from the chart on the next page, the most common ground cited was physical disability (23%), followed by sex (including harassment and pregnancy) (14%), mental disability (13%), and race (10%). Place of origin and colour were at 7%, followed by ancestry (6%), family status (5%), and age (4%). Marital status and sexual orientation were at 3%; religion and political belief were at 2%. Retaliation was cited in 8% of complaints. As a result of a BC Supreme Court decision in *Cariboo Chevrolet Pontiac Buick GMC Ltd. v. Becker*, 2006 BCSC 43, the ground of retaliation only applies after a human rights complaint has been filed.





CLOSED CASES

The tribunal closed 1,109 cases this year. Cases are closed when they are not accepted at the initial screening stage, withdrawn because they have settled or otherwise, abandoned, settled, dismissed or a decision is rendered after a hearing. This year, 222 complaints were not accepted at the initial screening stage, 111 were dismissed in whole under section 27, and 76 decisions were rendered after a hearing. The balance of the 1,109 cases were settled, withdrawn or abandoned.

Preliminary Decisions

Preliminary Decisions

Of the 606 decisions rendered this year, 524 (86%) involved preliminary applications. They include applications to accept a complaint after the six-month time limit (section 22), to defer a complaint (section 25), to dismiss a complaint without a hearing (section 27), and for other orders such as disclosure, adjournment, and limits on publication.

Preliminary Applications Decided

Applications to Accept a Late-Filed Complaint

Under section 22 of the *Code*, complainants must file their complaint within six months of the alleged discrimination, including discrimination that is a "continuing contravention". The Tribunal has discretion to accept complaints that are filed after the six-month time limit if it is in the public interest to do so and no substantial prejudice will result to any person.

The complaint form asks if the complaint is filed after the time limit. The Tribunal also screens complaints for timeliness. If it appears to be out of time, the complainant must apply to have the complaint accepted. A Tribunal member determines whether it was filed in time and, if not, decides whether to accept the late-filed complaint.

In some cases, a time limit issue may be identified after a complaint is accepted. Under section 27(1)(g), the Tribunal may dismiss a complaint after it has been accepted on the basis that it was filed out of time. The issues under section 27(1)(g) are the same as those under section 22: was the complaint filed in time and, if not, should the Tribunal accept it? The factors the Tribunal considers in deciding whether to accept a late-filed complaint are also the same.

In one decision this year, the Tribunal explained how complaints are screened for timeliness, and how final decisions regarding timeliness are made. (*Alessa v. Simon Fraser University and others*, 2007 BCHRT 46)

The Tribunal decided 142 applications involving time limit issues this year. In 26 of those, the complaint was found to have been filed in time, including 18 which were found to be a continuing contravention. Of the late-filed complaints, 38 were accepted in whole or in part. There were 44 late-filed complaints not accepted and 17 (of 60 applications) were dismissed in whole or in part under section 27(1)(g).

Section 22 Applications Decided

Continuing Contravention

Many time limit decisions consider whether the complaint alleges a "continuing contravention" under section 22(2), which includes allegations of repeated acts of harassment or discrimination, an ongoing failure to accommodate, or a continuing state of

affairs, such as a public building that is inaccessible to wheelchair users or a policy withholding employment benefits from those in same sex relationships. (*Dove v. GVRD and others (No. 3)*, 2006 BCHRT 374)

The Tribunal summarized recent decisions addressing the meaning of the term "continuing contravention". (*Stefanuk and Stefanuk v. Municipal Pension Board of Trustees*, 2007 BCHRT 19)

A continuing contravention was found where the complainant lost seniority when she required a shift change to accommodate her childcare needs and later was laid-off due to the earlier loss of seniority. The Tribunal decided that the two potentially discriminatory acts were linked as they both related to the same subject matter, namely the complainant's request for a shift change to accommodate her childcare needs, and the detrimental consequences of that shift change. (*Hoang v. Warnaco and Johns*, 2007 BCHRT 24)

PUBLIC INTEREST

When the Tribunal considers whether to accept a late-filed complaint under section 22(3), it first decides whether it is in the public interest to accept it.

In several cases, the delay in filing a complaint was considered in light of the complainant's medical issues: It was in the public interest to accept a complaint where a four-and-a-half-month delay was not significant in light of the complainant's documented medical problems. (*Murray v. BC Aboriginal Childcare Society and others*, 2006 BCHRT 316) and where there had been a seven-month delay in filing because, in the circumstances, greater weight was placed on ensuring access to persons with mental disabilities which hamper their ability to file a complaint. (*Crossman v. Northern Health Authority*, 2006 BCHRT 324) It was not in the public interest to accept a complaint where a delay of one and a half years was substantial and the Tribunal was not persuaded that the complainant was unable to file because of disabilities. (*Truong v. Campbell and Honcharuk*, 2006 BCHRT 332)

The public interest in a complaint may be a determinative factor. The Tribunal must be sensitive to the realities faced by workers, especially immigrant workers for whom English is a second language or those in non-unionized work environments, where there may be little or no protection against reprisals for raising work-related concerns. Such vulnerable workers may not know their rights under British Columbia law or how to pursue them. (*Hoang v. Warnaco and Johns*, 2007 BCHRT 24)

SUBSTANTIAL PREJUDICE

If it is in the public interest to accept a late-filed complaint under section 22(3), the Tribunal then must decide whether substantial prejudice will result to any person because of the delay.

The Tribunal found that the respondents, a strata council and others, would be substantially prejudiced in their defence where two former strata council chairs had died, one of whom was an essential witness. (*Jatzek v. Strata Corporation KAS-2071 and others (No. 2)*, 2007 BCHRT 102)

APPLICATIONS TO DEFER A COMPLAINT

The Tribunal may defer a complaint under section 25 of the *Code* if there is another proceeding capable of appropriately dealing with the substance of the complaint. Of the 20 applications to defer decided, 12 were granted, including one on consent.

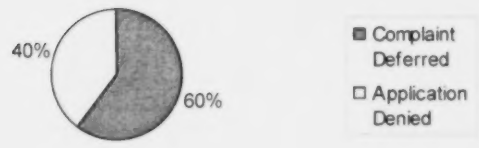
The Tribunal assesses applications to defer on the basis of the nature and subject matter of the other proceeding, the adequacy of the remedies available there, and whether it would be fair to the parties to defer the complaint. (*Dixon v. British Columbia Ambulance Service*, 2006 BCHRT 211); (*Steelworkers v. Hayes*

Forest Services and another, 2007 BCHRT 9)

The Tribunal determined that an action for wrongful dismissal was not capable of appropriately dealing with the substance of the complaint, as the allegations differed and the remedies sought in the action did not address the alleged violation of the *Code*. The Tribunal also considered the timely resolution of the human rights complaint, which was filed first. (*Cheung v. The Boss Bakery and Hong*, 2007 BCHRT 26)

The Tribunal determined that a Workers' Compensation Board claim could not deal appropriately with the substance of a complaint, because the WCB cannot address questions of discrimination under the *Code* directly, order remedies uniquely responsive to discrimination, and thereby satisfy the public interest in the resolution of human rights issues. (*Leclerk v. CJA Leasing & Management and others*, 2006 BCHRT 358) (See also: *Watt v. Tree Island Industries*, 2007 BCHRT 155)

Section 25 Applications Decided



APPLICATIONS TO DISMISS A COMPLAINT

A complaint may be dismissed under section 27(1) with or without a hearing. For efficiency and fairness reasons, the Tribunal's Rules contemplate that applications to dismiss will be brought early in the process, and generally will be decided on affidavits and other written information provided by the parties.

WHEN MAY A DISMISSAL APPLICATION BE MADE?

Rule 26(2) of the Rules also allows a respondent to make a dismissal application within 30 days of learning of new information or circumstances. The Tribunal rejected the argument that one of its own decisions was "new information" upon which the respondent could rely to file a dismissal application. (*Casper v. Victoria Police Department and Lane*, 2007 BCHRT 157)

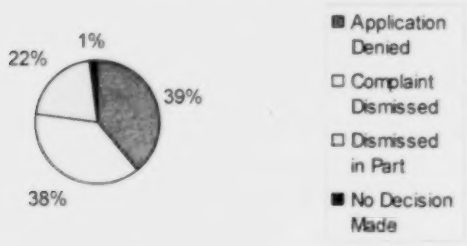
The Tribunal held that only in rare circumstances would it be appropriate to consider a dismissal application during the hearing of a complaint. (*Matuszewski v. B.C. (Ministry of Competition, Science and Enterprise)(No. 2)*, 2007 BCHRT 30; and *Taylor v. Selkirk College and others (No. 2)*, 2007 BCHRT 146)

DECISIONS

Of the preliminary decisions rendered this year, 56% were regarding applications to dismiss under section 27(1). There were 289 decisions made under this section: a total of 111 (38%) complaints were dismissed in whole and 64 (22%) were dismissed in part; of applications to dismiss 114 (39%) were denied and 5 (1%) were not decided.

Section 27(1) provides seven grounds for dismissing a complaint: jurisdiction; no contravention of the *Code*; no reasonable prospect of success; proceeding would not benefit the person, group, or class or would not further the purposes of the *Code*; complaint made in bad faith or for improper motives; complaint appropriately dealt with in another proceeding; and complaint filed out of time.

Section 27 Applications Decided



SECTION 27(1)(A) - JURISDICTION

The Tribunal reviews complaints to see if they are within its jurisdiction. If it is clear that the Tribunal does not have jurisdiction, it will refuse to accept the complaint. The Tribunal may ask the parties for written submissions on whether it has jurisdiction. A respondent may also file an application to dismiss the complaint under section 27(1)(a).

Nineteen complaints were dismissed in whole or in part because the Tribunal was without jurisdiction to proceed.

Most jurisdictional issues arise because the Tribunal is a provincial administrative body which does not have jurisdiction over federally-regulated undertakings. For example, the Tribunal does not have jurisdiction over the Air Canada Pilots Association, which is certified under the *Canada Labour Code* to act solely as the bargaining unit for Air Canada Pilots. This decision reviews the Tribunal's approach to questions of constitutional jurisdiction. (*Osenjak v. Air Canada Pilots Association*, 2006 BCHRT 614) Similarly, the Tribunal does not have jurisdiction over telecommunications, which falls within federal jurisdiction. (*Mitchell v. Hall and others*, 2006 BCHRT 202)

The prohibition against discrimination in employment in section 13 of the *Code* applies solely to employment relationships within provincial jurisdiction. The fact that the person who is alleged to have discriminated against a complainant may be employed by a provincially or federally regulated employer does not determine jurisdiction. It is determined by whether the complainant's employer is provincially or federally regulated. For example, the B.C. Corps of Commissionaires provides services to the RCMP Headquarters in Prince George and formed a vital, essential or integral part of the core RCMP undertaking. As such, both the individual and corporate respondents are subject to federal jurisdiction. (*Bergey v. B.C. Corps of Commissionaires and Stephenson*, 2006 BCHRT 275)

The Tribunal determined it had jurisdiction over a retaliation complaint against an employer acting within the scope of a federal undertaking. The *Code*'s retaliation provision is more closely related to the protection of the integrity of the Tribunal's processes than to the regulation of an employer's substantive human rights obligations. (*Mathison v. Musqueam Indian Band and Easton (No. 2)*, 2006 BCHRT 204)

Activities on First Nations lands, or in First Nations enterprises, may be subject to either provincial or federal jurisdiction depending on the circumstances. The Tribunal does not have jurisdiction over a society providing a range of child care services to Aboriginal communities. (*Murray v. BC Aboriginal Childcare Society and others (No. 2)*, 2006 BCHRT 369) or a child protection and family service agency for certain First Nations. (*Lyon v. Fox and Kwumut Lelum Child and Family Services*, 2006 BCHRT 414)

In some cases, the Tribunal had insufficient information to decide the jurisdictional issue and it relied on the presumption in human rights law which favours provincial jurisdiction unless otherwise determined. Therefore, at the screening stage, the Tribunal decided it had jurisdiction to accept the complaint for filing. However, pursuant to Rule 11(6) of the Tribunal's

Rules of Practice and Procedure, this was not a final decision that the Tribunal has jurisdiction. (*Facca v. Community Futures Development and others*, 2006 BCHRT 267) (*Konkin v. Ts'kw'aylaxw First Nation*, 2007 BCHRT 3)

Some applications under section 27(1)(a) raised the issue of the Tribunal's jurisdiction in relation to other administrative agencies. The Tribunal does not have jurisdiction to review their actions absent an allegation of discrimination. (*Standeven v. WorkSafe BC*, 2007 BCHRT 150) The argument that another agency has exclusive jurisdiction was rejected in a complaint regarding workers' compensation where the essence of the dispute raised a claim of discrimination under the *Code*. (*Vasquez v. WCB*, 2006 BCHRT 327) Similarly, the Tribunal held that the jurisdiction of the Labour Relations Board to decide complaints regarding the duty of fair representation does not oust the jurisdiction of the Tribunal. (*Stathis v. Salvation Army and others*, 2006 BCHRT 415)

SECTION 27(1)(B) - NO CONTRAVENTION OF THE *CODE*

Under section 27(1)(b), the Tribunal may dismiss a complaint that does not allege a possible violation of the *Code*. The Tribunal dismissed 47 complaints, in whole or in part, under this provision.

The Tribunal decides applications to dismiss under section 27(1)(b) based on the allegations in the complaint form, without reference to any alternative evidence or explanation which the respondent may put forward. (*Dhillon v. Hudd Distribution*, 2007 BCHRT 74); (*Vaughan v. B.C. (Ministry of Children and Family Development) and others*, 2007 BCHRT 17)

The Tribunal dismissed complaints against directors where there were no allegations against the individual members of the board. (*MacDonald v. Ann Davis Transition Society and others*, 2006 BCHRT 398; *Leech v. BC SPCA Board of Directors and others*, 2006 BCHRT 439)

A section 27(1)(b) application to dismiss may dispute that there is a link between the conduct complained of and the ground of discrimination. In a case where the Tribunal discussed the elements of an allegation of discrimination in hiring, it found that the allegations, if proven, could demonstrate a nexus between the disability and alleged unfair treatment. (*Sime v. Okanagan College*, 2007 BCHRT 137)

The Tribunal considered whether the *Code* applies to the conduct complained of and decided:

- Depending on the circumstances, the use of one racial epithet may constitute a contravention of the *Code*. (*Banwait v. Forsyth*, 2006 BCHRT 410)

- The ground of family status does not extend to a relationship between a respondent and his niece's boyfriend who was alleged to have been given preference in employment. (*Wang v. Oceanfood Industries and Luong (No. 2)*, 2006 BCHRT 379)

- The ground of criminal conviction extends to criminal acts which did not lead to a charge or conviction; whether the conduct was related to the employment is a defence to the complaint and is not considered on an application to dismiss under section 27(1)(b). (*Clement v. Jackson and Abdulla*, 2006 BCHRT 411)

- It is not discrimination contrary to s. 11 of the *Code* to advertise a Human Resources Development Canada funded position limited to students of a specific age. (*Ervin v. Roedde House Museum*, 2006 BCHRT 444)

- Beliefs about what are appropriate human resources and labour relations policies in the workplace and in the union do not come within the meaning of "political belief". (*Prokopetz and Talkkari v. Burnaby Firefighters' Union and City of Burnaby*, 2006 BCHRT 462)

SECTION 27(1)(C) - NO REASONABLE PROSPECT OF SUCCESS

Under section 27(1)(c), the Tribunal may dismiss a complaint that has no reasonable prospect of success. Here, the Tribunal considers all of the information before it, including the respondent's version of the facts, explanations, and defences. Under this provision, the Tribunal dismissed, in whole or in part, 100 complaints. The following are examples of complaints dismissed.

The respondents argued that a criminal conviction was related to the complainant's employment. The Tribunal dismissed the complaint as it determined that there was no reasonable prospect that the respondents would not be able to establish this defence. (*Thornton-Cronin v. Big Brothers and others*, 2006 BCHRT 412)

While section 10 does not require a formal tenancy relationship, the Tribunal dismissed a complaint where there was no reasonable prospect that there was a tenancy-like relationship between the parties. (*Ettya v. Au and Lim*, 2006 BCHRT 453)

The Tribunal will not deal with complaints about the appropriate standard of care a doctor provides to patients. It dismissed a complaint where a doctor was exercising his best medical judgment when he prescribed the medication he did for the complainant. (*Gallagher v. Henry*, 2006 BCHRT 318)

SECTION 27(1)(D) - PROCEEDING WOULD NOT BENEFIT THE PERSON, GROUP OR CLASS DISCRIMINATED AGAINST OR WOULD NOT FURTHER THE PURPOSES OF THE *CODE*

Many section 27(1)(d) applications are made on the basis that it would not further the purposes of the *Code* to proceed with the complaint where there has been a settlement agreement or a reasonable settlement offer. The Tribunal dismissed, in whole or in part, 31 complaints under this provision.

The Tribunal found that the existence of a settlement agreement is a compelling policy reason to dismiss a complaint under section 27(d)(ii). (*Schmidt v. Vancouver Public Library (No. 2)*, 2007 BCHRT 113) It denied an application to dismiss where the complainant was to get legal advice before being bound by the terms of the agreement, and refused to sign after receiving legal advice. (*Harder v. B.C. Ambulance Service*, 2007 BCHRT 131)

The Tribunal dismissed a complaint on the basis that the respondents had made a reasonable settlement offer. (*Demasi v. City of Vancouver (No. 2)*, 2006 BCHRT 220) It looked at the significance of the timing of a settlement offer when it was the basis for an application to dismiss under section 27(1)(d)(ii). (*Lawrence and Teruya v. Chartwell Construction and Baines*, 2007 BCHRT 49) The Tribunal also dismissed a complaint where the respondent had acted promptly and responsibly to the complainant's concerns, and attempted to balance the competing interests of all involved. (*C. v. Board of Trustees of School District No. 8 and another*, 2006 BCHRT 385)

Finally, the Tribunal considered whether it would not further the purposes of the *Code* to name an individual respondent where that person's employer is named as a respondent and has the capacity to provide the remedies the Tribunal might order. Considerations include the purpose in naming the individual, the

nature of the conduct, the measure of individual culpability, and whether the respondent acknowledges that the individual acts and omissions are its own and that it is responsible to satisfy any remedial orders. (*Daley v. B.C. Ministry of Health and others*, 2006 BCHRT 341)

SECTION 27(1)(E) - COMPLAINT MADE IN BAD FAITH OR FOR IMPROPER MOTIVES

Two complaints were dismissed under this provision. Most section 27(1)(e) applications are denied because the evidence does not support the allegations of bad faith or improper motives. To establish "bad faith" under section 27(1)(e), a respondent must do more than present a different version of events and say that the complainant is lying or in error. (*Hunter v. La Violette*, 2007 BCHRT 95)

The Tribunal dismissed a complaint under section 27(1)(e) where the respondent provided a substantial and reliable record and an objective conclusion could be drawn that the complainant had filed it for a purpose not consistent with the purposes of the *Code*. (*Johnson v. Community Futures Development and others (No. 2)*, 2006 BCHRT 320)

SECTION 27(1)(F) - COMPLAINT APPROPRIATELY DEALT WITH IN ANOTHER PROCEEDING

Two complaints were dismissed under this provision. Considering the meaning of "proceeding" under section 27(1)(f), the Tribunal decided that an investigation by the employer and its response to its investigative report recommendations was not a proceeding. (*Stathis v. Salvation Army and others*, 2006 BCHRT 415) Similarly, an independent report commissioned by a school board was not a proceeding. (*Sultani and Sultani obo Sultani v. Purhar and Bailey and Ward (No. 2)*, 2007 BCHRT 138) On the other hand, a harassment complaint procedure under a collective agreement could be a proceeding. (*Lloyd v. Gauvin*, 2006 BCHRT 241)

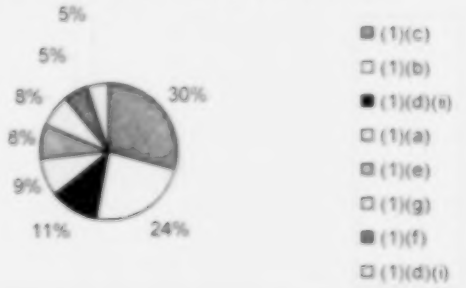
Where there has been another proceeding, the issue is whether it dealt with the substance of the complaint appropriately. The Tribunal found that a residential tenancy arbitration did not address the substance of the complaint. (*Ettya v. Au and Lim*, 2006 BCHRT 453) The Tribunal confirmed that a proceeding under the *Employment Standards Act* cannot appropriately deal with a human rights complaint. (*Janic v. Erakovic and another*, 2006 BCHRT 337)

A determination under section 27(1)(f) is not necessarily the same as one regarding issue estoppel, although it was held to be so in this case. The respondent alleged that the substance of the complaint was dealt with in a judicial review of a decision of a residential tenancy arbitrator. The Tribunal denied the application because the issue before the Tribunal differed from that before the Court. (*Willimont v. Mount Seymour Lions Housing Society (No. 3)*, 2006 BCHRT 460)

SECTION 27(1)(G) - ALLEGED CONTRAVENTION OUTSIDE THE TIME LIMIT

Decisions on applications to dismiss a complaint under section 27(1)(g) are reviewed under Time Limit Decisions (section 22). There were 60 applications under this provision which resulted in 17 complaints being dismissed in whole or in part.

Sub-Sections of Section 27 Relied On



OTHER PRELIMINARY DECISIONS

During the processing of a complaint, the Tribunal may be asked to render decisions about ongoing procedural disputes. As a result of a procedural change last year, where possible, preliminary procedural applications are dealt with by way of oral submissions. In some cases, the parties do not require a written decision and the Tribunal Member may decide that no public purpose would be served by issuing one. An order results. Other preliminary decisions deal with procedural issues such as disclosure, adjournments, and adding or substituting parties and a written decision is issued.

The Tribunal has the power to control its own process and to make orders to facilitate the just and timely resolution of complaints. Under the *Code* and the *Administrative Tribunals Act*, the Tribunal also has specific powers to order a person to attend a hearing, and order parties and third parties to disclose information. Examples of the Tribunal's procedural decisions this year include:

SYSTEMIC DISCRIMINATION

The Tribunal addressed whether an individual can bring a complaint of systemic discrimination. The complainant requested disclosure of documents relating to systemic remedies. The respondent argued that only complaints brought on behalf of a group or class of persons can raise systemic issues. The Tribunal determined that the complaint raised systemic issues. (*Powick obo Creuzot v. B.C. (Ministry of Public Safety and Solicitor General) and others*, 2007 BCHRT 93)

RESPONSE TO A COMPLAINT

The complainant applied to strike the Response to Complaint or, alternately, for a particularized response. The Tribunal ordered the respondent to provide particulars, as an adequate response must inform the complainant what facts the respondent agrees or disagrees with and must give the respondent's version of events where there is disagreement. A response must be responsive to the complaint and answer the questions in the Response to Complaint Form. (*Zoost v. B.C. (Ministry of Health)*, 2006 BCHRT 387)

COSTS

The Tribunal reviewed its decisions regarding costs and ordered costs where the respondent failed to file a timely response, which resulted in delay of the processing of the complaint and an adjournment of the hearing. (*Uswak v. M.D.R. Door and another*, 2006 BCHRT 338)

DISCLOSURE

The Tribunal confirmed that the appropriate use of disclosed documents was as found in the B.C. Court of Appeal's decision in *Hunt v. T & N plc.*, (1995), 4 B.C.L.R. (3d) 110, that "... a party obtaining production of documents is under a general obligation, in most cases, to keep such documents confidential, whether or not they disclose private or confidential material". This is consistent with the purpose of document disclosure, and with the fairness and efficiency of the Tribunal's procedures. (*Wong v. B.C. (Ministry of Public Safety and Solicitor General) and Morse*, 2007 BCHRT 63)

LIMITS ON PUBLICATION

The Tribunal ordered anonymization of a complainant's name where the order sought was narrow, the relevant public education purposes could be met, and strong arguments were made about the complainant's privacy interests. The complainant had an uncommon name and worked in a non-traditional field, both of which would make identification easier than in many

cases. Further, her concerns about being branded as a "complainer" on her ability to earn a living in her field were reasonable. (*J.J. v. School District No. 43 (Coquitlam) and another*, 2006 BCHRT 485)

SUBSTITUTE RESPONDENT

The Tribunal denied a respondent's application to substitute a respondent. The complainant is entitled to determine the respondents to be named. If a respondent believes it is incorrectly named, it may apply to dismiss the complaint but cannot simply say that another party is more appropriate. If a complainant does not name the correct respondent, the complaint may be dismissed either on a preliminary basis or after a hearing. Although a respondent may apply to add another respondent, the Tribunal determined that it was not appropriate in this case. (*Peterson v. Kinsman Retirement Centre and others*, 2007 BCHRT 129)

ADD A RESPONDENT

The Tribunal reviewed the factors to consider in an application to add a respondent: Are there allegations on which the Tribunal could make a finding of liability against the proposed respondent? And, if the application is made after the time limit in the *Code*, is the test in section 22(3) met? (*Stock v. Great West Life Insurance (No. 2)*, 2006 BCHRT 472)

AFFIDAVITS

The Tribunal considered the role of affidavit evidence in support of a preliminary application to dismiss. The respondents argued that their version of events should be accepted because it was supported by a statutory declaration and the complainant's was not. The Tribunal rejected this stating that while affidavits and statutory declarations are a preferred form of evidence on a preliminary application, other forms are acceptable. The form of the information does not determine the weight the Tribunal will give it. (*Kim and others v. McManus and others; Park and others v. McManus and others; Jin and others v. McManus and others; Cho v. McManus and others*, 2007 BCHRT 47)

FAILURE TO COMPLY WITH AN ORDER TO ATTEND

Where a witness was avoiding service of an Order to Attend, the Tribunal served the witness with a decision requiring attendance and stating that if the witness did not attend, the Tribunal would apply to the Supreme Court under sections 34 and 39 of the *Administrative Tribunals Act* for an order directing compliance with the Tribunal's order. The Court may commit for contempt for non-compliance and the penalties may include fines and imprisonment. (*Taylor v. Selkirk College and others*, 2006 BCHRT 405)

RE-OPEN A DECISION ON AN APPLICATION TO DISMISS A COMPLAINT

The Tribunal has an equitable jurisdiction to re-open a complaint in exceptional circumstances. It dismissed a complaint after seeking submissions from the parties. The complainant's reply submissions were not received as a result of a failed fax transmission. His counsel received the dismissal decision which mentioned the absence of reply submissions and sought to have the complaint re-opened. The failed fax transmission was the result of inadvertent error in the representative's office, and not the fault of the complainant. The interests of justice and fairness required that the complaint be re-opened in order to allow the reply submissions to be considered. After considering the reply submissions, the Tribunal accepted the complaint for filing. (*Byrnes v. RFGOP Restaurant Holdings and others (No. 4)*, 2006 BCHRT 292)

FINAL DECISIONS

This year, the Tribunal rendered 76 decisions after a hearing on the merits. The number of final decisions has increased steadily since the inception of the direct access model in 2003. There were 23 final decisions in the first fiscal year, 39 the next year, and 53 decisions in the last year. This was expected as the previous model's investigation process removed some complaints at an earlier stage in the process.

Another trend in final decisions is the decreasing percentage of complaints found to be justified after a hearing. In the first fiscal year, 65% of the final decisions found the complaint justified. Many of those complaints were referred to the Tribunal by the former Commission. Complaints found to be justified dropped to 49% in the next year, and to 40% in the last year. This year, the percentage was 36%. Of the 76 final decisions (which decided 77 complaints), the Tribunal found that 28 complaints were justified in whole or in part, and dismissed 49.

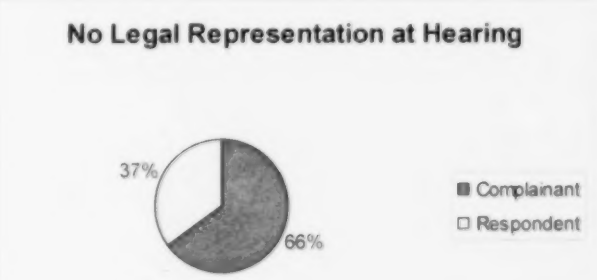
REPRESENTATION BEFORE THE TRIBUNAL

Complainants appeared in 68 of the 76 hearings; thus, 8 (11%) complaints were dismissed as a result of the complainant not appearing. Respondents appeared in 70 of the 76 hearings, including one where the complainant did not appear; the complaints were determined to be justified in the 5 (7%) complaints where the respondent alone did not appear.

Complainants were unrepresented in significantly more hearings than were respondents: Complainants had no legal representation in 45 (66%) of the hearings in which they appeared while respondents had no legal representation in 26 (37%) of the hearings in which they appeared.

In 25 cases, only the respondent had legal representation – in each of these the complaint was dismissed. In 6 cases, only the complainant had legal representation – in each of these the complaint was found to be justified. Where neither party was represented, 8 of the 18 (44%) complaints were found to be justified. Finally, where both parties were represented, 9 of the 14 (64%) cases were found to be justified.

The Human Rights Clinic provided counsel in 13 of the 23 hearings in which complainants were represented (17% of the 76 hearings). The complaint was found to be justified in 10 (77%) of these 13 cases (which included 3 where the respondent did not appear and 5 in which only the complainant had legal representation). The Human Rights Clinic represented complainants in a number of cases which settled in advance of the hearing and in 2 cases which settled during the hearing.



CASE HIGHLIGHTS

Many complaints allege discrimination in more than one area, and on more than one ground. This year, the Tribunal considered complaints in each area in which the *Code* provides protection, except the purchase of property (section 9) and wages (section 12).

The following are case highlights from the final decisions this year, under each area considered, and with sections on remedies granted, costs applications, and the Tribunal's power to re-open a final decision. The full text of the decisions can be found on both the

Tribunal's website www.bchrt.bc.ca and the Courts of British Columbia website www.courts.gov.bc.ca

EMPLOYMENT - SECTION 13

This year, 54 (71%) of the final decisions involved the area of employment, with 25 (46%) found to be justified. One decision involved an employment advertisement (s. 11), and one involved an occupational association (s. 14).

Of the employment decisions, 37 (50%) involved complaints of disability discrimination, with 13 (48%) found to be justified. Fifteen involved the ground of physical disability, with 9 (60%) justified; 6 involved the ground of mental disability, with one (17%) justified; and another 6 involved both grounds, with 3 (50%) justified.

Twenty-one (39%) complaints involved the ground of sex, with 8 (38%) found to be justified. Four (50%) of the 8 sexual harassment complaints were justified; 2 (50%) of the 4 pregnancy discrimination complaints were justified; and 2 (22%) of the 9 other sex discrimination complaints were found to be justified.

Nine (17%) complaints involved the grounds of race, colour, ancestry, and/or place of origin, with 2 (22%) found to be justified. These grounds are often cited together. Of those 9 complaints, 7 were based on race, 4 on colour, 3 on ancestry, and 7 on place of origin. Discrimination based on race was found in one complaint, and discrimination based on place of origin was found in 2.

Four (7%) complaints involved the ground of religion, and 2 (50%) were found to be justified. Three (6%) complaints involved the ground of age and all were found to be justified. Three complaints raised the ground of sexual orientation, but none of these complaints were justified on this basis. One of 3 family status complaints was found to be justified; it also raised the ground of marital status. The grounds of political belief and criminal conviction were each raised in one (2%) complaint and were dismissed.

The employment-related cases included allegations of discrimination in advertising; hiring; terms and conditions of employment, including benefits, accommodation, and work-place harassment; as well as dismissal from employment.

INTERVIEW QUESTIONS: AGE, MARITAL STATUS, FAMILY STATUS

The Tribunal concluded that, in the absence of a reason for its inquiries, an employer discriminated against a young, single mother when it asked her interview questions regarding her age, marital status, and children. (*McGregor v. Morelli and Quarterway Hotel*, 2006 BCHRT 277)

REFUSAL TO HIRE: DISABILITY

The respondent admitted that one of the reasons it did not hire the complainant was because she has epilepsy. There was no factual basis for assuming that the condition would prevent her from running a restaurant alone. (*Briltz v. Yaki's Pizza and Labossiere*, 2006 BCHRT 245)

ALLEGED HIRING PREFERENCES: RACE, ANCESTRY AND PLACE OF ORIGIN

The Tribunal dismissed a complaint where the complainant alleged that a person of a different ethnic background, who was not better qualified, was hired as a cardiac technologist. She alleged that the respondents preferred to hire "Asians", but the successful candidate was not Asian and other staff hired in the hospital department were from diverse backgrounds. The Tribunal concluded that the complainant was not hired for reasons that were not influenced by racial

or ethnic prejudices or stereotypes. The unstructured nature of the hiring practices lead the complainant to believe that she was treated unfairly and from there it was a "short step" to believing that she was discriminated against. (*Szarko v. Vancouver Coastal Health Authority and Grewal*, 2006 BCHRT 188)

FAILURE TO ACCOMMODATE: PHYSICAL DISABILITY

The employer failed to accommodate the complainant when it forced him to work, and ultimately terminated his employment when he could not, rather than listening to his complaints of pain and giving him a short time off to determine its cause. (*Huynh v. Boma Manufacturing (No. 3)*, 2006 BCHRT 478)

IMPOSITION OF TERMS AND CONDITIONS OF EMPLOYMENT: PHYSICAL DISABILITY

Discrimination on the basis of physical disability was established when the employer imposed new terms and conditions of employment on the complainant, some of which were beyond her physical ability, resulting in her leaving work. The Tribunal rejected the respondent's argument that the complainant had quit. (*Ehret v. Shandro Investments (No. 2)*, 2006 BCHRT 486)

DENIAL OF SENIORITY ACCRUAL BY LTD RECIPIENTS

The Tribunal found discrimination where disabled employees on long term disability benefits did not accrue seniority. (*Matuszewski v. B.C. (Ministry of Competition, Science and Enterprise) (No. 2)*, 2007 BCHRT 30). This case is currently the subject of a judicial review.

SEVERANCE PAY: DISABILITY DISCRIMINATION

The employer decided to partially close a sawmill. It offered voluntary severance to all active employees but not to employees absent from work and receiving LTD, WCB or BC Life benefits. The Tribunal determined that the severance offer was an earned benefit of employment acknowledging length of service, rather than income replacement for employees who would suffer job loss and concluded that the complainants were denied a benefit due to their disability and that the complaint was justified. The Supreme Court upheld the Tribunal's decision on judicial review. (*Mehar and others v. International Forest Products Ltd. (No. 3)*, 2006 BCHRT 189; upheld in *International Forest Products Ltd. v. Sandhu*, 2007 BCSC 2001). This case is currently before the Court of Appeal.

WORK ENVIRONMENT: DISABILITY

The complainant's multiple physical and cognitive problems were a factor in her adverse treatment in the workplace. The Tribunal found that it was reasonable for her to leave her employment because of the hostile work environment. (*Witke v. Mageria Holdings Ltd.*, 2006 BCHRT 340)

WORK ENVIRONMENT: RACIAL SLURS

Four decisions involved allegations of racial slurs. The Tribunal found two complaints justified: where a French speaking Canadian originally from Quebec was repeatedly called a "stupid Frenchman" (*Mercier v. Dasilva*, 2007 BCHRT 72) and where an employee originally from Afghanistan was referred to as "Osama" and the "terrorist". (*Hashimi v. International Crowd Management (No. 2)*, 2007 BCHRT 66) In a decision dealing with two complaints, a single racial slur was made. The Tribunal determined that one comment, in the context in which it was made, did not establish discrimination. (*Khota*

v. Patka and Patka v. Khota, 2006 BCHRT 611)

POISONED WORK ENVIRONMENT: SEXUAL HARASSMENT

A sexual harassment complaint was upheld against an employer, but dismissed against the individual respondents. Their conduct involved isolated incidents that alone did not amount to discrimination. However, viewed in its entirety, the conduct amounted to discrimination for which the employer was responsible. Although the employer had implemented appropriate policies, provided training, and investigated the complaints, part of the workplace was still dominated by gender-based comments and intimidating actions that created a poisoned work environment for women. The employee had to take continuous steps to address the harassment and ultimately went on sick leave, partially due to the gender-based poisoned work environment. The Tribunal found the employer failed to provide a harassment free workplace, and that the harassment was based, at least in part, on the complainant's sex. (*Algor v. Alcan and others (No. 2)*, 2006 BCHRT 200)

TERMS AND CONDITIONS OF EMPLOYMENT: PREGNANCY

The Tribunal found discrimination on the basis of sex (pregnancy) when the employer prohibited the complainant from sitting, an accommodation required by her to continue working in a salon until her maternity leave. (*McIntosh v. Shami and Zeeba Hair and Body Image*, 2006 BCHRT 527)

CHILD-CARE OBLIGATIONS: SEX AND FAMILY STATUS

The complainant argued that eliminating all part-time positions at the Employment Standards Branch had an adverse impact on women working part-time while raising children. The Tribunal held that while the elimination of part-time positions might be discriminatory, it was not the case here. Full-time positions were also eliminated, including those held by women with child care responsibilities; the complainant maintained a part-time position; and the evidence did not establish that the changes significantly interfered with her child care responsibilities or those of other women in her circumstances. (*Esposito v. B.C. (Ministry of Skills, Development and Labour (No. 2)*, 2006 BCHRT 300)

TERMINATION OF EMPLOYMENT: AGE

The Tribunal decided that age was a factor in the decision to end the complainant's employment. At the time, the complainant was 59 years old and a 29 year employee of the respondent. The respondent told the complainant that her services were no longer required after making age-related comments including asking about her plans for retirement. (*Buchanan v. WMC Management Services*, 2006 BCHRT 339)

TERMINATION OF EMPLOYMENT: DISABILITY

The Tribunal found it was reasonable to infer that the complainant's physical disability was a factor in her dismissal when the respondent terminated her employment the day after she said she was going to the doctor for a back problem. (*Eastman v. Cornerstone Courier (No. 2)*, 2006 BCHRT 209)

A restaurant owner fired a server for her conduct during a telephone conversation. He knew of her back condition and would, or should, have been aware the conduct resulted from the stress related to her physical disability. The Tribunal considered the meaning of disability under the *Code* and found the termination discriminatory because the disability was a factor, indirectly, in the adverse treatment. (*Mikolas v. Travelodge Hotel and others*, 2007 BCHRT 135)

The Tribunal examined the type of accommodation required of a small employer in this decision. There was discrimination regarding the terms of employment and the termination of the employment. Knowing that he had a brain injury and epilepsy, the Tribunal held that it would be a reasonable accommodation for the respondent to inquire about the complainant's behaviour before dismissing him. (*Emerick v. Sooke Esso and Wattie*, 2007 BCHRT 79)

TERMINATION OF EMPLOYMENT: SEX (PREGNANCY)

The complainant was treated adversely by her employer and laid off. The Tribunal found the actions discriminatory when the only distinguishing factor between the worker and others was her pregnancy. (*Dance v. ANZA Travel and Boshell (No. 3)*, 2006 BCHRT 196)

The Tribunal dismissed a complaint on the basis of pregnancy where it found that the employer terminated the complainant for absences where they did not know she was pregnant or that her absences were related to her pregnancy. She did not appear to be pregnant and did not tell them. (*Fontaine v. Budget Rent-A-Car of BC*, 2006 BCHRT 181)

TERMINATION OF EMPLOYMENT: SEX

The Tribunal found that sex was a factor in the complainants' dismissal: The two women were the only employees fired, and the management viewed female managers negatively as evidenced by general comments about women and specific comments about female managers. (*Van Eijk and Sheppard*, 2006 BCHRT 363)

EMPLOYMENT ADVERTISEMENT

The Tribunal found discrimination where an employer placed an ad asking for a "young trainee", and told the 40 year old complainant that he was not qualified because he would not be able to handle the weights being lifted; the employer was looking for someone 20 to 30 years old. (*Miu v. Vanart Aluminum and Tam*, 2006 BCHRT 219)

OCCUPATIONAL ASSOCIATION - SECTION 14

In the single decision about discrimination regarding membership in a trade union, employers' organization or occupational association, the Tribunal found a *prima facie* case of discrimination where a therapist was denied registration because of his quadriplegia, which prevented him from treating patients "hands on", but it also decided that the College established a defence by offering the complainant a form of registration. (*Van Leening v. College of Physical Therapists*, 2006 BCHRT 357)

SERVICES - SECTION 8

Eighteen (24%) of the final decisions involved the area of services. They included services provided by the Workers' Compensation Board, ICBC, strata corporations, the provincial government, a women's fitness centre, and a weight loss centre. Only 2 (11%) of them were found to be justified.

Twelve services complaints alleged disability discrimination. Five were on the ground of physical disability; among these were the 2 successful services complaints. One raised the ground of mental disability, and another 4 were based on both grounds.

Eight complaints alleged discrimination on the grounds of race, colour, ancestry, and/or place of origin: race was raised in 8, colour in 4, ancestry in 4, and place of origin in 3.

Three complaints raised the ground of religion. Family status, sex, and sexual orientation were each raised in one services complaint.

Final Decisions

What Questions May be Asked?

In applying for workers' compensation benefits, the complainant was asked questions related to his race, colour, and place of origin. The questions were not discriminatory in the circumstances, and the questions a service-provider may ask without contravening the *Code* were discussed. (*Golmohammadi v. WCB and others (No. 3)*, 2006 BCHRT 425)

Disability Benefits

By regulation, a complainant's provincial disability benefits are reduced by the amount of his CPP disability benefits. By contrast, someone earning income from employment is allowed a monthly exemption of $400. The Tribunal dismissed the complaint as the evidence did not establish a link between the receipt of CPP benefits and the inability to work. Recipients of both provincial and CPP disability benefits could not be distinguished on the ground of physical or mental disability from those receiving only provincial benefits. (*Harmer v. B.C. (Ministry of Human Resources) (No. 4)*, 2006 BCHRT 431)

Disability Discrimination

A weight loss centre initially discriminated against a complainant when it refused to enrol her because she has Hepatitis C, though it later tried to accommodate her to the point of undue hardship. (*Thiessen v. L. A. Weight Loss*, 2006 BCHRT 313)

When is Differential Treatment Discrimination?

The complainant was denied membership by a women-only fitness centre because he is a man. The Tribunal concluded that the denial was not discriminatory, as, when viewed in context and considering the purposes of the *Code*, it had no adverse effect on the complainant. The complainant had no intention of pursuing a fitness program or joining a fitness facility. The denial did not affect his ability to participate in a fitness program close to his home at a fee he could afford. Moreover, some women seek a women-only facility because of issues arising from their disadvantage in society. (*Stopps v. Just Ladies Fitness (Metrotown) and D. (No. 3)*, 2006 BCHRT 557)

Tenancy - Section 10

Five (7%) of the decisions were in the area of tenancy. The one complaint found to be justified was based on the grounds race, sex, family status, and age. The other 4 involved the following grounds: physical disability; physical and mental disability and sex; race; and race, colour or ancestry.

A tenant alleged that a property management company discriminated when it treated him differently from other tenants and then terminated his tenancy. Without explanation from the respondent, who did not appear at the hearing, the treatment of the tenant was influenced by a perception that he was an angry, threatening, young, Black man. The Tribunal found that his race, colour, age and sex were, in combination, factors in this perception. (*Monsson v. Nacel Properties*, 2006 BCHRT 543)

Retaliation - Section 43

Five (7%) decisions involved complaints of retaliation. One was found to be justified.

The Tribunal found discrimination on the ground of sex (sexual harassment) in the workplace, and retaliation. The Tribunal discussed the necessary elements of a complaint of retaliation and found that the respondent sought to embarrass, humiliate and intimidate the complainant when he repeatedly went to her new place of employment, laughed at her in the street, and filed a baseless police complaint

against her. (*Clarke v. Frenchies Montreal Smoked Meats and Blais (No. 2)*, 2007 BCHRT 153)

The Tribunal summarized the relevant principles in a complaint of retaliation in two preliminary decisions on applications to dismiss. (*Talkkari v. City of Burnaby and others*, 2007 BCHRT 54 and *Swift v. B.C. (Ministry of Human Resources)*, 2007 BCHRT 67)

PUBLICATION - SECTION 7

The Tribunal dismissed a complaint in the area of publication, concluding that the province's publication of the Registration of Live Birth Form did not contravene s. 7 of the *Code* on the grounds of sex and family status. (*Stone v. B.C. (Ministry of Health) (No. 7)*, 2007 BCHRT 55)

REMEDIES - SECTION 37

If the Tribunal finds that a complaint is justified, it must make an order that the person stop the discrimination and not repeat it in the future.

Section 37 of the *Code* allows other remedies to be granted, including: a declaration that the conduct is discrimination and an order that the person take steps to address the effects of the discrimination, start an employment equity program or special program to improve conditions for the disadvantaged, provide what was denied, compensate the person for lost income or out-of-pocket expenses and for injury to dignity, feelings and self-respect.

A human rights remedy is not meant to punish a person who breaches the *Code*. Rather, remedies are intended to compensate the victim of discrimination.

The purposes of the *Code* are to eliminate and prevent discrimination for the benefit of society and to try to put a disadvantaged individual in the position they would have been if the discrimination had not happened. The Tribunal has discretion in ordering remedies to achieve the *Code*'s purposes. The *Code* does not provide a monetary limit to awards for compensation for injury to dignity, feelings and self-respect.

This year, the Tribunal found 28 complaints were justified. Twenty-five involved employment and the most common order made was for wage loss and pre and post judgment interest. Orders included:

- compensation for the lost opportunity to be considered for a job (*McGregor v. Morelli and Quarterway Hotel*, 2006 BCHRT 277);
- union and employer are to work together to accommodate the complainant's physical disability and transfer him to another store (*Ingenthron v. Overwaitea Food Group and Van Pelt (No. 2)*, 2006 BCHRT 556);
- nominal compensation for unquantified expenses for having witnesses attend the hearing, an expert report and copying medical records (*Wutke v. Mageria Holdings*, 2006 BCHRT 340);
- expenses for loss of stock options and legal expenses (*Toivanen v. Electronic Arts (Canada) (No. 2)*, 2006 BCHRT 396);
- compensation for loss of maternity and parental benefits (*Van Eijk and Sheppard v. Seacastle Enterprises Inc. (No. 3)*, 2006 BCHRT 363).

The Tribunal's task in making an award for injury to dignity, feelings and self-respect is to assess the impact of the discriminatory conduct on the complainant. Most orders for compensation ranged between $2,000 and $7,000. Awards over $7,000 usually indicate there was a particularly severe impact on the complainant's dignity, whereas those less than $2,000 usually indicate a lesser impact.

Final Decisions

This year, 2 decisions represent extremes in the spectrum. In one, the Tribunal decided that the complainant's evidence did not establish any injury to his dignity, feelings or self-respect as a result of the employer's denial of a transfer to a different store. His hurt feelings related solely to his reaction to an arbitration award, which is not a compensable injury under the *Code*. An award for injury to dignity is not automatic and may not be appropriate in every circumstance. No award was made. (*Ingenthron v. Overwaitea Food Group and Van Pelt (No. 2)*, 2006 BCHRT 556)

By contrast, the Tribunal ordered damages of $20,000 for injury to dignity, feelings and self-respect when the employer failed to investigate why the complainant needed a leave of absence, did nothing to accommodate her and ultimately fired her when she was vulnerable. The complainant was devastated by the impact of her job loss at age 47. Unable to cope on her own, she lost her independence and had to return to Alberta and live with her parents. (*Toivanen v. Electronic Arts (No. 2)*, 2006 BCHRT 396)

Costs - Section 37(4)

The Tribunal dealt with several applications for costs.

Following the adjournment of a hearing at the respondents' request, the employer dissolved the company and left the country, having failed to provide disclosure of documents and a new address. The Tribunal awarded the complainant $5,000 in costs as a result of the prejudicial impact on him and the severe negative impact on the Tribunal's processes. (*Halliday v. Craft Welders and Kastner (No. 3)*, 2006 BCHRT 479)

The Tribunal awarded $1,000 in costs against a complainant for repeated, unnecessary, and unfounded personal attacks on the respondents, as well as his improper conduct in clearly attempting to bring the Tribunal into disrepute. (*Glumac v. Fusco and others (No. 4)*, 2006 BCHRT 578)

A complaint being justified in part is not a bar to an award of costs against the complainant. The Tribunal concluded that she gave untruthful evidence calculated to mislead the Tribunal and awarded costs of $400 to the respondent. (*Ferguson v. Kimpton (No. 2)*, 2006 BCHRT 467)

The complainant engaged in improper conduct by making allegations attacking the character of the respondents, making a threat in his submissions, and in his interactions with respondents' legal counsel and staff. In determining the amount of costs, the Tribunal did not take into account that the complainant had not established a *prima facie* case since costs should not be used to discourage the filing of human rights complaints. The actual costs incurred by a party are not determinative, but will guide the Tribunal in determining the award. The Tribunal took into account the complainant's health which he said affected his ability to act in an appropriate manner. It also considered that the complaint was filed for a purpose unrelated to human rights, and that the accusations against the respondents were made public. The Tribunal awarded costs of $3,000 to the respondent. (*Stopps v. Just Ladies Fitness (Metrotown) and D. (No. 4)*, 2007 BCHRT 125)

The Tribunal declined to award costs against a complainant who failed to provide a witness list and did not attend the hearing. (*Cline v. Deacon (No. 3)*, 2006 BCHRT 475)

Power to Re-Open

The Tribunal concluded it did not have jurisdiction to amend the style of proceeding after the final decision was released, nor was it appropriate, in the circumstances, to exercise the Tribunal's equitable jurisdiction. (*Halliday v. Kraft Welders and Kastner (No. 4)*, 2007 BCHRT 119)

Judicial Reviews and Appeals

Judicial Reviews and Appeals

The Tribunal's decisions are subject to review by the superior courts (the B.C. Supreme Court, the B.C. Court of Appeal, and the Supreme Court of Canada). There is no right to appeal but a party who believes that the Tribunal erred may seek judicial review in the B.C. Supreme Court, pursuant to the *Judicial Review Procedure Act*, within the 60 day time limit for final decision.

Section 59 of the *Administrative Tribunals Act* sets out the standards of review that apply to Tribunal decisions. A Supreme Court decision may be appealed to the B.C. Court of Appeal, and a further appeal may be made to the Supreme Court of Canada, with leave of that Court.

Judicial Reviews in B.C. Supreme Court

This year there were 24 petitions for judicial review, two more than last year. Three petitions were related to final decisions. Seven related to preliminary decisions which involved a decision not to accept or to dismiss the complaint.

Fourteen petitions related to preliminary decisions made in the course of on-going proceedings. The number of petitions filed respecting ongoing complaints is a concern, since they can fragment the proceedings and use limited Tribunal resources.

The B.C. Supreme Court released fourteen decisions this year on judicial reviews of Tribunal decisions. Nine petitions were dismissed, two on the basis that they were premature and seven where the Court found no error. The Court allowed four petitions and dealt with procedural matters in the other.

Unsuccessful Judicial Reviews

The Tribunal dismissed a complaint under section 27(1)(f) of the *Code* where there had been an arbitration. The Court decided that the Tribunal's decision that the substance of the complaint had been appropriately dealt with in another proceeding was discretionary and should not be overturned unless patently unreasonable. (*Hines v. Canpar Industries Ltd.*, 2006 BCSC 800)

The Court decided it was premature to review a Tribunal decision to consider a novel question of law whether the area of "sexual orientation" under the Code includes "BDSM", a sexual lifestyle or practice whose exact nature was unclear. Alternatively, the Court found that the Tribunal was correct in deciding that "BDSM" was not clearly excluded from sexual orientation so that the complaint should have been rejected at the screening stage. An appeal has been filed. (*Barker v. Hayes*, 2006 BCSC 1217)

In an unreported oral decision, the Court dismissed a petition which disputed the Tribunal's findings of fact and ruled that a discretionary decision to award costs against the complainants was not patently unreasonable. An appeal has been filed. (*Jiwany and Jiwany v. West Vancouver Transit et al.* (September 6, 2006) Vancouver Registry No. L051493)

The Court dismissed a petition where the Tribunal decided the complaint was filed out of time and did not involve a continuing contravention. It held that the Tribunal's decisions on the issues of timeliness, continuing contraventions and the exercise of discretion under section 22(3) are all part of a discretionary gatekeeping function that attract the most deferential standard of review. (*Callaghan v. University of Victoria et al.* 2006 BCSC 1503)

The Court held that the Tribunal correctly interpreted section 7(1)(a) of the *Code*, which prohibits dis-

criminatory publications, when it held that it is not essential to allege that a publication is discriminatory in relation to another area of the *Code*. As well, the Tribunal correctly determined it had jurisdiction and rejected the argument that the complainants lacked standing to bring the complaint. The Court found no error in the Tribunal's decision denying an application to dismiss the complaint under section 27(1)(c) of the *Code*. (*Carson v. Kmcwentweew Society*, 2006 BCSC 1779)

The Tribunal did not make a reviewable error in rejecting a complaint for filing, which was essentially a resubmission of an earlier rejected complaint. (*L.M.A. v. British Columbia Human Rights Tribunal*, 2006 BCSC 1889)

The Tribunal did not err in deciding the complaint was filed out of time and in refusing to accept it. (*Cowie v. Grand Forks District Savings Credit Union*, 2006 BCSC 2008)

The employer offered severance to active workers on partial closure of a mill, but excluded disabled workers. The Tribunal decided that the purpose of the severance offer was to compensate employees for their years of service and, therefore, disabled employees were adversely affected when the severance offer was not made to them. The Court dismissed the petition. A notice of appeal has been filed. (*International Forest Products Ltd. v. Sandhu*, 2007 BCSC 201) (aka: *Mehar and others v. Interfor (No. 2)*, 2006 BCHRT 189)

The Court decided that a petition for judicial review brought in the middle of a Tribunal hearing for review of a no evidence motion was premature. (*Zellers Inc. et al v. Naser et al*, 2007 BCSC 243)

SUCCESSFUL JUDICIAL REVIEWS

The Court found the Tribunal's usual process for applications to dismiss to be procedurally fair but decided the decision in this case was arbitrary and, therefore, patently unreasonable because the whole of the complaint had not been considered. (*Rojas v. EaglePicher Energy Products*, 2006 BCSC 1101)

The Tribunal's decision on deferral of the complaint was unfair, and its discretion was exercised arbitrarily, because it did not hear argument from the parties on the factors which formed the basis of its discretion. (*Overwaitea Food Group LP v. Bates*, 2006 BCSC 1201)

The Court decided that the Tribunal erred in finding that the time limit for making an application to dismiss began to run at a point prior to the lifting of a deferral order. While the deferral order was in place, it stayed proceedings; so it was contradictory to find that time limits would be running. (*Vancouver (City) v. Grant*, 2006 BCSC 1855)

The Court held that the government was not a co-employer, considering factors of integration and control as well as utilization and financial burden, in the global statutory context. The complainant was a paramedic for the BC Ambulance Service, which is operated by the Commission, an independent statutory body. The Commission's paramedics are represented by CUPE; but its administrative staff are members of the BCGEU, the bargaining unit for provincial government employees. The complainant alleged that his employer did not accommodate his disability by considering a suitable position in the BCGEU bargaining unit. The Tribunal held that the Commission and the provincial government were co-employers and the government had a duty to accommodate the complainant. (*HMTQ v. Emergency Health Services Commission et al*, 2007 BCSC 460)

Judicial Reviews and Appeals

Court of Appeal

There were four appeals to the B.C. Court of Appeal.

The Court of Appeal upheld the Supreme Court's decision that the Tribunal does not have jurisdiction to consider a complaint by an individual regarding the actions of Crown Counsel in the approval of criminal charges against him, which is an exercise of prosecutorial discretion immune from review. However, it found that the chambers judge erred in narrowing the scope of the complaint and did not address the complaint of systemic discrimination in regard to the Policy. The Court of Appeal remitted the complaint back to the Tribunal to determine if the systemic aspect of the complaint could proceed without the individual complaint, whether the policy role of the Attorney General and Crown Counsel was a service customarily available to the public, and whether the complaint was moot because the policy had changed. (*British Columbia v. Crockford*, 2006 BCCA 360)

The Court of Appeal upheld the Supreme Court decision that the Tribunal had no jurisdiction over a complaint that female members of a golf club were excluded from a men's lounge. In prohibiting discrimination under section 8 of the *Code*, the Legislature intended it to apply to services or facilities provided in the "public" sphere of activity, not to capture organizations with a combined economic and social nature, or a purely social, religious or cultural nature. The golf club membership came together by a private selection process based on personal attributes, indicating a private relationship between them. It was more social than economic and was entitled to discriminate at the initial stage of admission to membership. Since the *Code* did not apply at this stage, it did not apply to services offered within it. The Supreme Court of Canada has denied leave to appeal. (*Marine Drive Golf Club v. Buntain et al and BC Human Rights Tribunal*, 2007 BCCA 17)

The Court of Appeal affirmed decisions of the Supreme Court and the Tribunal holding that the government is bound by the *Code* and there is no principle of Crown immunity that exempts it from liability to compensate for discrimination. The Court of Appeal stated that the government is subject to all of the remedies available under the *Code*. It also held that the standard of review for questions of mixed fact and law under section 59 of the *Administrative Tribunals Act* is correctness. Application has been made to the Supreme Court of Canada for leave to appeal. (*British Columbia v. Bolster*, 2007 BCCA 65)

Supreme Court of Canada

The Supreme Court of Canada denied leave to appeal in the following three cases.

The Court of Appeal held that the Tribunal has no jurisdiction to proceed with a complaint if the complainant dies. (*British Columbia v. Goodwin*, 2006 BCCA 585)

The Court of Appeal upheld the Tribunal's dismissal of a complaint without a hearing on the basis that it had no reasonable prospect of success. (*Berezoutskaia v. British Columbia Human Rights Tribunal*, 2006 BCCA 95)

The Court of Appeal held that the group rights exemption in section 41 of the *Code* allowed a society providing services to abused women to refuse volunteer work to a woman, who was a male to female post-operative transsexual, on the basis that she was not born a woman. (*Vancouver Rape Relief Society v. Nixon*, 2005 BCCA 585)

Special Programs

Special Programs and Policy

Section 42(3) of the *Code* recognizes that treating everyone the same does not necessarily promote true equality and the elimination of discrimination. It provides for special programs which treat disadvantaged individuals or groups differently in order to recognize the reality of their diverse characteristics and their unique needs.

The Tribunal has published a policy explaining the special programs approval process and its requirements. A special program is any program or activity that has as its objective the amelioration of conditions of disadvantaged individuals or groups. All approvals are time-limited and are generally between six months to five years in duration. Employment equity programs are usually approved for several years. Periodic reporting may be a condition of approval. A program provider may apply to renew the approval.

A special program, which is approved by the Chair of the Tribunal, is deemed not to be discriminatory under the *Code* for the duration of the approval. Special programs may be undertaken without Tribunal approval, but the program provider will not be protected from a human rights complaint.

New Programs

The Chair approved four new special programs this year:

The Atira Women's Resource Society received approval to hire a woman for a temporary position of Legal Advocate Assistant to Women in its Legal Advocacy Program. The Program provides legal information, advocacy, and court accompaniments to women currently living, or accessing services, in Vancouver's Downtown Eastside on issues including family, criminal, immigration and poverty law, Aboriginal justice, and disability issues. The approval is for a four month period.

School District No. 79 (Cowichan Valley) received a five year approval to advertise and hire persons of Aboriginal ancestry in a variety of teaching and administrative roles, so that the total number of Aboriginal teachers is proportionate to the size of the Aboriginal student population the District serves. At the time of application, 14% of the District's students were of Aboriginal Ancestry. The District wished to provide a positive role model for students, reduce the achievement gap between Aboriginal and non-Aboriginal students, and open doors for Aboriginal teachers. In addition, it wished to reinforce that the District values diversity and the expertise, knowledge, and skills that teachers of Aboriginal ancestry bring to the District for the good of the entire school population. The Tribunal required the District to provide the Tribunal with a copy of its Annual Aboriginal Education Report which was to include a specific section addressing the impact of the Special Program.

Thompson Rivers University, School of Social Work and Human Service, received approval to advertise for and hire one faculty member of Aboriginal ancestry with a minimum of a Master of Social Work degree, Ph. D. preferred. The School had hired two Aboriginal faculty members pursuant to an earlier special program. One of those faculty members was leaving and a replacement was required. The School stated that Aboriginal people continue to be disadvantaged in their primary and secondary school education, and many feared the rigors of a university program. Therefore, there was real value to Aboriginal students, who considered applying to the BSW program, to know that some classes are conducted by Aboriginal faculty. The Tribunal provided an approval for a five year period and required that the School provide the Tribunal with an annual report that confirmed whether the faculty position had been filled through restricted hiring, summarized any sig-

nificant challenges that affected the success of the special program, and described the impact of the initiative.

The University of Victoria's Employment Equity Program was renewed for a further 5 years to January 24, 2012. The Tribunal noted the extensive effort that the University had made to provide employment equity for Aboriginal peoples, persons with disabilities, members of visible minorities and women, through its policies, programs and educational materials that seek to create an inclusive and welcoming environment for members of all groups protected by the *Code*. As a condition of this approval, the University was required to provide the Tribunal with annual reports addressing the progress made and the obstacles in achieving equitable representation.

Tribunal Members

Tribunal Members

The Tribunal has nine full-time Members including the Chair, who mediate and decide human rights complaints under the *Code*. The current Chair was appointed in 2000 and has acted as the head of human rights and equity tribunals in Canada for well over a decade. Eight Members are qualified lawyers and the ninth has experience as a labour adjudicator. The Chair is also responsible for approving special programs under section 42 of the *Code*.

Appointments

Members are appointed by the Lieutenant Governor in Council for a renewable five-year term, following a merit-based, multi-step qualification process. Candidates must demonstrate their ability for adjudicative work through decision-writing, situational interviews and peer reviews.

Code of Conduct

The Chair supervises the Members, designates preliminary applications and hearings to be decided by them, and monitors adherence to performance standards and timeliness. Members are subject to a Code of Conduct in the performance of their role, and complaints about the conduct of Members may be made to the Chair. Section 30 of the *Administrative Tribunals Act* requires Members to faithfully, honestly and impartially perform their duties and to maintain confidentiality.

Decisions

In making their decisions, Members are required by law to be independent and impartial. Although the Ministry of the Attorney General provides budget funding, the government may not direct or influence Members in their decision-making or otherwise interfere with their independence through administrative and budgetary matters that touch on decision-making.

The Tribunal does not make decisions on human rights complaints on a consensus basis. Each Member decides the matter before them independently and in good faith, according to the law and their own best judgment. To ensure flexibility in the application of the *Code*, Members are not bound by each others' decisions but are bound to follow decisions of the BC courts and the Supreme Court of Canada and may find guidance in decisions of courts and tribunals in other jurisdictions. Members departing from earlier Tribunal jurisprudence render decisions explaining why. Members' draft decisions are subject to a voluntary internal review process. To further promote the development of a principled and coherent body of jurisprudence, Members meet regularly to discuss, at a general level, their evolving articulation of the rights protected by the *Code*, and the practices and procedures that support it. Members and legal counsel also meet to discuss existing and emerging legal issues and to review appeals and judicial reviews of their decisions.

Human Rights Education

Pursuant to sections 5 and 6 of the *Code*, the Attorney General is responsible for educating the public about human rights, and researching and consulting on matters relevant to the *Code*. The Tribunal has no mandate to monitor the state of human rights in the province; however, through open hearings, publication of its decisions, and media reporting, the Tribunal is a source of information to the public about their rights and responsibilities under the *Code*. Complaints which are upheld or dismissed perform an educative function.

Provincial Contributions

The Tribunal regularly receives requests for presen-

tations on human rights. In the last year, the Chair and legal counsel spoke at continuing legal education seminars on human rights and administrative law, labour and employment, and preliminary applications to the Tribunal. The Chair participated in planning meetings for continuing education in human rights and an administrative law manual. Presentations were made at Royal Roads University, Simon Fraser University, various law firms and the human rights subsection of the BC Branch of the Canadian Bar Association.

The Chair is the Chair of the BC Council of Administrative Tribunals (BCCAT) Education Committee and is actively involved in providing training to members of other administrative tribunals in the province on hearing skills, decision writing and mediation skills. Two Tribunal members are on BCCAT's board of directors, and another Tribunal member is an adjunct professor at the University of British Columbia teaching administrative law.

EXTRA-PROVINCIAL CONTRIBUTIONS

The Chair also made extra-provincial contributions by speaking at a national course on "Running a Fair Hearing", an Ontario seminar on the Direct Access Model for human rights protection and mandatory retirement issues, and was consulted by the Ontario Government and the Ontario Human Rights Tribunal with respect to proposed human rights reforms there. The Chair also sits as a BC representative in the Canadian Council of Administrative Tribunals Board of Directors and is a member of its Professional Development and Literacy Committees.

INTERNATIONAL CONTRIBUTIONS

The Tribunal continued to be active at an international level in the last year. The Chair spoke on administrative law and reform initiatives in Canada, at the International Tribunals Workshop in Canberra, Australia, at the Australian Institute of Judicial Administration Conference and the National Association of Law Judges Conference in Washington.

HEATHER M. MACNAUGHTON, CHAIR

Ms. MacNaughton was first appointed as Chair of the Tribunal on August 1, 2000, and was reappointed for a further five-year term beginning July 31, 2005. She holds both a Bachelor of Laws (1982) and Master of Laws (1998) from Osgoode Hall Law School and a Bachelor of Arts (with distinction) from Brock University (1979). Her Master's work focused on the Litigation Process and Alternative Dispute Resolution.

Prior to her appointment to the Tribunal, Ms. MacNaughton chaired both the Ontario Human Rights Board of Inquiry and the Ontario Pay Equity Hearings Tribunal.

Ms. MacNaughton left private practice in 1995 to become a Vice Chair of the Ontario Human Rights Board of Inquiry, the Pay Equity Hearings Tribunal, and the Employment Equity Tribunal. Prior to that, she had been a partner with a national law firm practising in the areas of Labour, Employment, Human Rights, Administrative Law and Civil Litigation.

J.A. (TONIE) BEHARRELL, MEMBER

Ms. Beharrell was appointed as a full-time Member of the Tribunal on December 2, 2002 for a five-year term. She holds a law degree from the University of British Columbia (1997) and a Bachelor of Arts from Simon Fraser University (1994).

Prior to joining the Tribunal, Ms. Beharrell was an Associate at a national law firm practising in the areas of Labour, Employment, Human Rights, and Administrative Law.

Tribunal Members

Barbara Humphreys, Member

Ms. Humphreys was appointed as a full-time Member of the Tribunal in 1997. She was most recently appointed for a five-year term on January 1, 2005. She holds a law degree from the University of Victoria (1984) and a Bachelor of Arts from Sir George Williams University (1969).

Ms. Humphreys joined the B.C. Council of Human Rights in 1990. She was actively involved in the transition from the former B.C. Council of Human Rights to the Human Rights Tribunal.

Prior to joining the B.C. Council of Human Rights, Ms. Humphreys was an Ombudsman Officer for the Office of the Ombudsman.

Barbara J. Junker, Member

Ms. Junker was appointed as a full-time Member of the Tribunal on July 28, 2003 for a five-year term. She holds a Bachelor of Commerce degree (1977) from the University of British Columbia.

Prior to joining the Tribunal, Ms. Junker spent nine years as a Vice-Chair at the Labour Relations Board. Prior to that, Ms. Junker worked in the healthcare industry as an employer representative in Labour and Employee Relations.

Lindsay Lyster, Member

Ms. Lyster was appointed as a full-time Member of the Tribunal on September 30, 2002 for a five-year term. She holds a law degree from the University of British Columbia (1991) and a Bachelor of Arts (with distinction) from the University of Victoria (1987).

Ms. Lyster was an Associate at a national law firm practising in the areas of Labour, Human Rights, Constitutional Law, Administrative Law, and Employment Law. Prior to joining the Tribunal, Ms. Lyster was Policy Director of the B.C. Civil Liberties Association. She left private practice to become an Adjunct Professor, Faculty of Law, University of British Columbia, teaching in the area of Canadian Constitutional Law.

Diane MacLean, Member

Ms. MacLean was appointed as a full-time Member of the Tribunal on July 28, 2003 for a five-year term. She holds a law degree from the University of British Columbia (1985), a Bachelor of Arts (1972) and a Master of Arts (1980) in Economics from Simon Fraser University.

For several years, Ms. MacLean practised law, taught university courses, and worked as an economic and legal researcher and writer.

Ms. MacLean began working for the Ministry of Labour in 1993, first as a Policy Specialist at the Pension Standards Branch and later as an Officer at the Employment Standards Branch.
Prior to her appointment to the Tribunal, Ms. MacLean was a Vice-Chair at the Workers' Compensation Appeal Tribunal.

Ana Mohammed, Member

Ms. Mohammed was appointed as a full-time Member of the Tribunal on March 1, 2001. Her appointment expired in February 2006 but she remained seized of a number of matters and completed them following the expiry of her appointment. She holds a law degree from the University of Western Ontario (1990) and an Honours Bachelor of Arts degree from the University of Manitoba (1986).

Ms. Mohammed practised law for five years in Toronto, primarily in the areas of Labour and Employment (with an emphasis on Human Rights) and Criminal Law.

Prior to joining the Tribunal, Ms. Mohammed was pursuing her Master of Laws degree at the University of British Columbia in the areas of Human Rights and Employment Law, and was a Human Rights Consultant in British Columbia.

KURT NEUENFELDT, MEMBER

Mr. Neuenfeldt was appointed as a full-time Member of the Tribunal on January 6, 2003 for a five-year term. He holds a law degree from the University of British Columbia (1978) and a Bachelor or Arts degree from the University of Wisconsin (1972).

For several years, Mr. Neuenfeldt worked with the Legal Services Society of BC. While there, he held a range of positions including Staff Lawyer, General Counsel and Director of Client Services. He then practised privately in Vancouver.

Prior to joining the Tribunal, Mr. Neuenfeldt was a member of the Immigration and Refugee Board of Canada for over nine years.

ABRAHAM OKAZAKI, MEMBER

Mr. Okazaki was appointed as a full-time Member of the Tribunal on July 28, 2003 for a five-year term. He holds a law degree from the University of British Columbia (1971) and a Bachelor of Arts degree from the University of Alberta (1964).

Mr. Okazaki practiced law, primarily Corporate and Commercial, but also Civil and Criminal Litigation.. Mr. Okazaki has experience as an executive and educator in both the private and public sectors. He has held executive, administrative and teaching positions, and directorships in both Canadian and international businesses, universities and not-for-profit organisations.

Prior to joining the Tribunal, Mr. Okazaki was a Vice-Chair of the Workers' Compensation Appeal Tribunal.

JUDITH PARRACK, MEMBER

Ms. Parrack was appointed as a full-time Member of the Tribunal on August 1, 2005 for a five-year term. Ms. Parrack holds a law degree from Osgoode Hall Law School (1987).

Ms. Parrack was an Associate with a national law firm from 1989 to 1994 and a staff lawyer at the B.C. Public Interest Advocacy Centre from 1995 to 1999. She was a full-time Member of the B.C. Human Rights Tribunal from 1999 to 2002.

Prior to re-joining the Tribunal in 2004, Ms. Parrack was in private practice in the areas of Labour, Human Rights and Administrative Law.

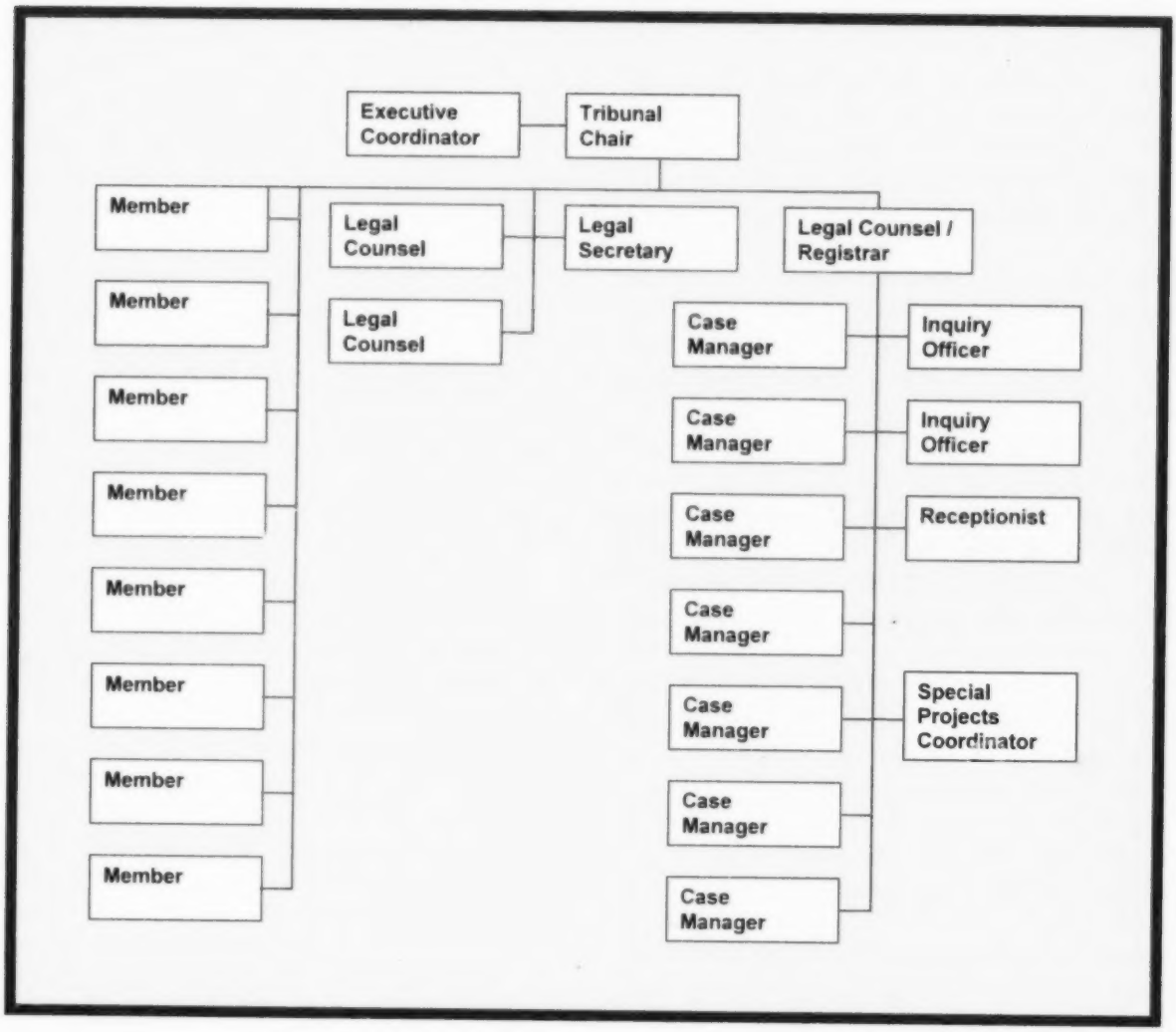
MARLENE TYSHYNSKI, MEMBER

Ms. Tyshynski was appointed, by the Chair, as a full-time Member of the Tribunal on December 1, 2005 for a temporary 6-month term. Her term expired during the fiscal year but she remained seized of a number of matters and completed them following the expiry of her appointment.

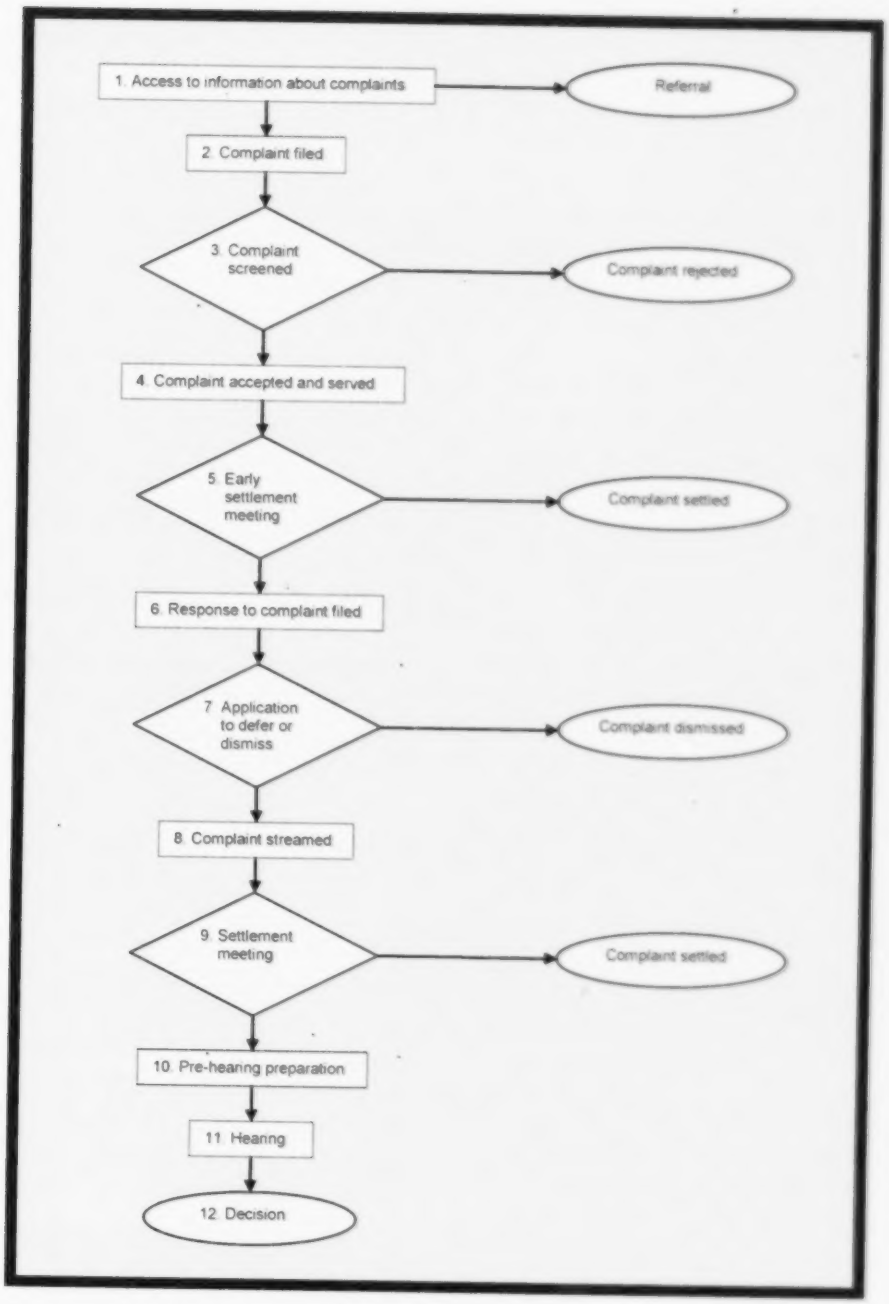
Ms. Tyshynski has returned to her position as legal counsel to the Tribunal. She holds a law degree from the University of Victoria (1988), a Master of Social Work degree from Wilfred Laurier University (1978) and an Honours Bachelor of Applied Science degree from the University of Guelph (1976).

At the outset of her career, Ms. Tyshynski was an associate with two law firms in Victoria. She was in private practice for several years specializing, among other areas, in Administrative Law, then she worked as a staff lawyer for the Legal Services Society. Prior to her appointment as Member, Ms. Tyshynski served as legal counsel to the Tribunal for three years.

Organization Chart



Complaint Flow Chart



Steps in the Complaint Procedure

1. Access to Information about Complaints

Two Tribunal inquiry officers give callers basic information about human rights protection under the *Code*, the complaint process and other organisations providing assistance in human rights matters. If the call is not about a human rights matter, the inquiry officers may refer the caller to another agency. Complaint forms, guides and information sheets are available from the Tribunal, on its website, at government agents' offices, the Human Rights Clinic and other organisations.

2. Complaint Filed

The first step in the complaint process is filing a complaint form.

3. Complaint Screened

The complaint is assigned to a case manager who reviews it to see it is complete, appears to be within the jurisdiction of the Tribunal, and is within the six-month time limit.

If the complaint form is not complete, the case manager explains why and gives the complainant a limited time to complete it.

If it is clear that the complaint does not involve a provincial matter or a human rights matter covered by the *Code*, the case manager will recommend to the Chair that the complaint be rejected.

If it appears that the complaint was filed after the six-month time limit, the case manager asks the parties whether it is in the public interest to accept the complaint and whether anyone would be substantially prejudiced by the delay in filing. A Tribunal member decides whether to accept the complaint.

4. Complaint Accepted and Served

After the complaint is screened, the Tribunal notifies the parties that it has been accepted.

5. Early Settlement Meeting

The parties may meet with a Tribunal mediator who will help them resolve the complaint before any further steps are taken. Many complaints are settled at this stage.

6. Response to Complaint Filed

If the parties do not settle or do not want an early settlement meeting, the respondent files a response to the complaint form and may also file an application to defer or dismiss the complaint.

7. Application to Defer or Dismiss

If a respondent applies to have the complaint deferred or dismissed, the Tribunal gets submissions from the parties and a Tribunal member makes a decision. Complaints may be deferred if there is another proceeding capable of appropriately dealing with the substance of the complaint. Complaints may be dismissed for the reasons provided in section 27(1) of the *Code*.

8. Complaint Streamed

Once a response to the complaint is filed and screened, the Tribunal decides whether it will follow the standard stream or be case-managed by a Tribunal member because of its complexity or other special characteristics.

9. SETTLEMENT MEETING

After the complaint is streamed, the parties have another opportunity to take part in a settlement meeting.

10. PRE-HEARING PREPARATION

If the complaint does not settle, the parties must prepare for the hearing and exchange relevant documents, witness lists, and positions on remedy. The case manager will telephone them several weeks before the hearing to check that they are ready.

11. HEARING

Hearings are held before a Tribunal member or a panel of three members in exceptional cases. The parties attend in person and the hearing is open to the public. Evidence is given through witnesses, documents and other items. Each party has an opportunity to challenge the other party's evidence and to make arguments supporting their position.

12. DECISION

Based on the evidence, the arguments and the relevant law, the Tribunal member or panel decides whether the complainant has proven that discrimination occurred and, if so, whether the respondent has a defence to the discrimination. If the complaint is not justified, it is dismissed. If the complaint is justified, orders are made to remedy the discrimination.

Publications and Staff

The following Guides, Information Sheets and Policies are available on our Web site or by contacting the Tribunal. Please refer to the back cover of this report for contact information.

Guides

1– The BC Human Rights Code and Tribunal
2– Making a Complaint and guide to completing a Complaint Form
3– Responding to a Complaint and guide to completing a Response to Complaint Form
4– The Settlement Meeting
5– Getting Ready for a Hearing

Information Sheets

1– Tribunal's Rules of Practice and Procedure
2– How to Name a Respondent
3– What is a Representative Complaint?
4– Completing Time Limit Forms - Complainant
5– Completing Time Limit Forms - Respondent
6– Tribunal Complaint Streams
7– Standard Stream Process - Complainants
8– Standard Stream Process - Respondents
9– How to Ask for an Expedited Hearing
10– How to Deliver Communications to Other Participants
11– What is Disclosure?
12– How to Make an Application
13– How to Add a Respondent
14– How to Add a Complainant
15– How to Make an Intervenor Application
16– Applying to Dismiss a Complaint Under Section 27
17– How to Request an Extension of Time
18– How to Apply for an Adjournment
19– How to Require a Witness to Attend a Hearing
20– Complainant's Duty to Communicate with the Tribunal
21– How to Find Human Rights Decisions
22– Remedies at the Human Rights Tribunal
23– How to Seek Judicial Review
23A– Judicial Review: The Tribunal's Role
24– How to Obtain Documents From a Person or Organization Who is Not a Party to the Complaint
25– How to Enforce Your Order

Policies

- Complainant's Duty to Communicate with the Tribunal
- Public Access and Media Policy
- Settlement Meeting
- Special Programs

Tribunal Staff

Registrar Legal Counsel
Vikki Bell, Q.C.

Executive Coordinator
Andrea Nash

Legal Counsel
Katherine Hardie (part-time)
Denise Paluck (part-time)
Marlene Tyshynski (part-time) (partial year)

Legal Secretary
Mattie Kalicharan

Case Managers
Noreen Barker (partial year)
Kevin D'Souza (partial year temporary assignment)
Pam Danchilla
Peter Dowsett
Janice Fletcher (part-time)
Lorne MacDonald (part-time)
Lindene Jervis
Sarah Johnson (partial year)
Maureen Shields
Stacey Wills (part-time)

Special Projects Coordinator
Luke LaRue

Inquiry Officers
Lorne MacDonald (part-time)
Stacey Wills (part-time)
Christine Hutton (partial year temporary assignment)

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